Customer No. 27061

Patent
Attorney Docket No. GEMS8081.045

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Gupta et al.
Serial No.	:	09/748,520
Filed	:	December 22, 2000
For	:	METHOD AND APPARATUS FOR DISPLAYING REAL-TIME STATUS OF PRODUCT AVAILABILITY, ORDERS, AND SALES REVENUE
Group Art No.	:	2171
Examiner	:	Le, U.

CERTIFICATION UNDER 37 CFR 1.8(a) and 1.10

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Date: June 6, 2006 /Jessica A. Calaway/
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REPLY BRIEF RESPONSIVE TO EXAMINER'S ANSWER MAILED APRIL 6, 2006

Dear Sir:

This Reply Brief is being filed in response to the Examiner's Answer mailed April 6, 2006.

REMARKS

The Examiner's Answer mailed April 6, 2006 maintained the rejection of claims 1-7 and 22-25 under 35 U.S.C. 102(e) as being anticipated by Christensen et al. (US 2002/0156694) and the rejection of claims 8-21 and 26-35 under 35 U.S.C. 103(a) as being unpatentable over Christensen et al. in view of Parad (USP 5,369,570). Responsive to Appellant's Appeal Brief filed January 30, 2006, the Examiner addressed some of the remarks proffered by Appellant.

In particular, the Examiner acknowledged Appellant's argument that any accompanying exhibit need not support all claimed limitations, provided that any missing limitation is supported by the §1.131 Declaration itself. However, the Examiner concluded that no satisfactory evidence was admitted by the Appellant in the §1.131 Declaration filed on December 31, 2003, so as to support the claim that the current invention was conceived of prior to the effective date of the Christensen reference. *See Examiner's Answer, April 6, 2006, p. 7.* In the Appeal Brief, Appellant stated a comparison of what the Examiner alleged the §1.131 Declaration fails to establish with what Appellant believes note 3 of the Declaration establishes. That is, Appellant believes that Note 3 indicates Inventor Yenerich's understanding that the claims as presently pending are a textualization of that which is shown and described in Exhibit A filed with the §1.131 Declaration. Appellant argued that a portion of the evidence submitted with the §1.131 Declaration is Inventor Yenerich's attestation that, prior to December 12, 2000, he and his co-inventors invented that which is called for in the present claims. *Appeal Brief, p. 8.* Appellant asserted that the Examiner's rejection of the present claims over Christensen completely disregards the evidence provided in the body of the §1.131 Declaration, and as such, would require verbatim recitation of the claims to be in Exhibit A. That is, the Examiner has afforded no degree of interpretation of that which is disclosed in Exhibit A beyond the specific terms used therein.

The Examiner stated that "the evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Christensen reference" and that "there is no demonstrative evidence or complete disclosure to another of the claimed 'counting a number of days between a current date and the date when the product will be ready for shipment to create a number of days before the product is available…'" so as to properly support conception. *See Examiner's Answer, April 6, 2006, p.7.* Rather, the Examiner characterized Appellant's

declaration supporting this claim as evincing no more than a "vague idea" of the claimed subject matter. *Id.* While Applicant agrees that a §1.131 Declaration cannot merely consist of vague and general statements in the broadest terms pointing towards a completion of the invention, it also is not required that the subject matter of a claim be expressed in a verbatim statement in the §1.131 Declaration or in the attached exhibit. Declarations and exhibits that demonstrate a clear averment of the conception of a particular feature should be worthy of credence. *See Ex parte Swaney, 89 USPQ 618, 619 (PO Bd.App.1950).* Appellant has submitted ample evidence by way of declaration and supporting exhibits to show that the aforementioned claim was conceived of and reduced to practice before the effective date of Christensen. In p. 8-9 of the Appeal Brief, Appellant stated:

> As shown in the exemplary screen capture on page 5 of Exhibit A (under the heading "Offering"), the present invention includes an "Offering window" along with a sub-menu associated with the selected offering. Exhibit A, pg. 5. As shown therein, the "CT Offering" includes an "LCAT Number" column and a "Status" column associated therewith. Id. As shown in the "Status" column, the Exhibit shows conception of several status identifiers including an "Immediate Shipment" status, a "Call for Availability" status, and a "Shipment within 90 Days" status. Id. Exhibit A necessarily discloses counting a number of days between a current date and the date when the product will be ready for shipment to create a number of days before the product is available by disclosing the determination of the "Status" shown in the exemplary screen capture on page 5 of Exhibit A. Id. That is, by displaying that a product "Status" is available for "immediate shipment", is a "call for availability", or that there will be a "shipment in 90 days", the Exhibit discloses that which is claimed. In determining which if any of these exemplary "Status" identifiers is applicable to a specific order, the present date is determined, a date when the specific order is going to ship is determined, and the number of days between these two dates is counted or calculated to determine which "status" of the exemplary status identifiers is applicable to a specific order. For example, for a product to be associated with a Status of "Shipment within 90 days" the Exhibit discloses counting a number of days between today (a current date) and the date when the product will be ready for shipment (within 90 days), creating a number of days (within 90 days) before the product is available, and displaying a listing of each product (the LCAT Number) and when the product is available (immediately or within 90 days). The Examiner has provided no reasoning how Exhibit A does not disclose that which Inventor Yenerich attests is disclosed therein. Accordingly, the Exhibit taken with the inventors sworn statement in the §1.131 Declaration filed on 31 December 2003 under 37 CFR §1.131 is clearly sufficient to overcome the Christensen et al (US 2002/0156694) reference.

While the evidence in Exhibit A may not be in the language specified in the referenced claim, it gives a clear indication that the inventor was in possession of the invention during the time in question and should therefore be worthy of credence. It is not necessary that the exact

number of days till shipment be shown (e.g., Shipment within 43 days). The Examiner seems to conclude that this requirement is set forth in the claims, when in reality, the claims only call for counting a number of days between a current date and the date when the product will be ready for shipment to create a number of days before the product is available. As written, there is no requirement that the exact number of days till shipment be shown, and while this number is necessarily calculated when determining the shipping period, it is not displayed for viewing to a user. Therefore, requiring such an exact number from Exhibit A, which is a replication of a screen shot viewable to a user as set forth in this invention, is unreasonable and unduly burdensome when considering that the claims are completely silent to such a feature.

Therefore, for the reasons stated in the Appeal Brief filed January 30, 2006, and the reasons stated herein, Appellant believes that the §1.131 Declaration and supporting Exhibit filed on December 31, 2003, convincingly show that the current invention antedates the Christensen reference. As such, Appellant respectfully submits that the Examiner has provided no supportable position that claims 1-35 are not patentable. There being no remaining rejections, Appellant respectfully requests that the Board direct passage of the present Application to issuance.

Respectfully submitted,

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